

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5976**

**PETITION OF GBI CORPORATION**

(Hearing held May 5, 2004, Worksession held July 14, 2004)

**OPINION OF THE BOARD**

(Effective date of Opinion, April 22, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-7.15(b)(1). The petitioner proposes to construct new single-family dwellings/townhouses that require a fifty (50) foot variance as they are within fifty (50) feet of the side lot line. The required side lot line setback is one hundred (100) feet.

Frank Gordon, President, GBI Corporation, appeared with Susan W. Carter, Esquire, and Michael J. Watkins, Project Designer/Land Planner, at the public hearing.

The subject property is Part of Lots 60 and 61, Block A, Mary J. Boland Subdivision, located at 20524 Frederick Road, Germantown, Maryland, 20876, in the R-200/TDR Zone (Tax Account No. 00795633).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct thirty new single-family dwellings/townhouses.
2. Mr. Gordon testified that the property is an unusual and unique lot because it is exceptionally narrow and deep and it is located adjacently to residentially zoned lots. Mr. Gordon testified that if the variance request were denied the property could not be developed as proposed.
3. Mr. Watkins testified that the property is a four-acre-tract of land, consisting of two, narrow, undeveloped lots. The lots are identified as Part of Lots 60 and 61 in the Mary J. Boland Subdivision and are zoned R-200/TDR. The subject property adjoins single-family homes located on Collins Drive at its northern boundary. See Exhibit No. 15 [tax map].

4. Mr. Watkins testified that the subject property is being developed according to the master plan recommendations, using the TDR Zone standards of a density of eight units per acre. The TDR-8 density standards require that all structures be set back 100 feet from any single-family residentially zoned land. Mr. Watkins testified that he has the option to develop the site either under basic R-200 standards or under the TDR standards.
5. Mr. Watkins testified that to the north and west of the subject of the property are single-family dwellings, across -from the property is an elementary school, and to the south and west are commercially zoned sites. Mr. Watkins testified that the development standards require that the new townhouses be setback 100 feet from adjoining single-family dwellings on Collins Drive and that this requirement would take away half of the property's development ability. Mr. Watkins testified that construction, as proposed, is required to go through the subdivision process.
6. Mr. Watkins testified that two lots are a 100 feet in width and approximately 850 feet in depth and that the property is unique because its topography, its shape and size and its zoning designation. Mr. Watkins testified that the lot's topography rises and falls in elevation from 16 feet to 30 feet. Mr. Watkins testified that 50-foot setback between the subject property and the adjoining residential properties would be developed as a forest conservation buffer.
7. Mr. Watkins testified that the proposed construction would consist of thirty new townhouses and that the access to the townhouses would be via a private street from the south section of the subject property, MD Route 118/Darnestown/Germantown Road. The property also has proposed temporary right-in and right-out access from Route 355/Frederick Road. See, Exhibit No. 4(b) [pre-application plan].
8. Mr. Watkins testified that the proposed roadway could not be located elsewhere on the site and meet the requirements for the storm water management facilities and the forest conservation requirements for the property.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply

with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot has no exceptional topographical or other conditions not shared with the adjoining and neighboring properties. The Board further finds that the petitioner's property is similar in shape and size to the properties the immediately adjoin the property at its southern boundary. See, Exhibit No. 9 [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of fifty (50) feet from the required hundred (100) foot side lot line setback for the construction of new single-family dwellings/townhouses is denied.

The Board adopted the following Resolution:

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, in agreement, and with Angelo M. Caputo and Donald H. Spence, Jr., in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 22nd day of April, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.